IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-433

HIGHWAY & CITY FREIGHT DRIVERS, DOCKMEN AND HELPERS, LOCAL UNION NO. 600, a voluntary unincorporated labor organization,
Respondent,

v.

GORDON TRANSPORTS, INC., et al.,
Petitioners.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on May 19, 1978.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 576 F.2d 1285 and is printed in Appendix A hereto, infra, p.p. A-1 to A-13. The Memorandum

Opinion of the United States District Court for the Eastern District of Missouri is reported at 432 F.Supp. 1326 and is printed in Appendix B hereto, infra, p.p. A-14 to A-21. The Memorandum Opinion of the Bankruptcy court is not reported and is printed in Appendix C hereto, infra, p.p. A-22 to A-36.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on May 19, 1978. Petitioners' Petition for Rehearing, or, in the Alternative, Motion for Hearing by the Court En Banc was duly and timely filed in said United States Court of Appeals for the Eighth Circuit. Said Petition for Rehearing or, in the Alternative, Motion for Hearing by the Court En Banc was denied on June 20, 1978.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I. Whether Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, a voluntary unincorporated labor organization whose sole "business" or function is to represent employees in an industry affecting commerce, is a "corporation" and therefore a "person" within the scope of Section 4(a) of the Bankruptcy Act entitled to the benefits of the Act as a voluntary bankrupt.

II. Whether Local Union No. 600 is a completely autonomous entity existing independently of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or whether it is an integral part of the International Union so that absent joinder therein by the International, Local Union No. 600 may not file a voluntary petition in bankruptcy.

STATUTES INVOLVED

11 U.S.C. §1(8). The said 11 U.S.C. §1(8) provides:

" 'Corporation' shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument."

11 U.S.C. §1(23). The said 11 U.S.C. §1(23) provides:

" 'Persons' shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this Act shall include persons who are participants in forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations."

29 U.S.C. §185(b). The said 29 U.S.C. §185(b) provides:

"Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT OF THE CASE

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("International") consists of a number of local unions chartered and owing their existence as local unions to the International. Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 ("Local") is one of the local unions so chartered. The Local's office and domicile is in the City of St. Louis, Missouri, and it draws its membership from and represents the employees of trucking terminals throughout the St. Louis metropolitan area.

The constitution of the International establishes the inter-relationship between the International and the Local. Examples of that inter-relationship are: the International consists of local unions; only members of the International are members of locals; the International may expel or suspend individual members; the Local's by-laws must comply with all requirements of the International and the International must approve the by-laws of the Local; the Local must be chartered by the International; the International may order a vote by the Local on any matter it deems appropriate; the Local cannot take any action which may impair its ability to meet its financial obligations to the International, or which may impair its status as a solvent local; the amount, the method and priority of payments to the International is controlled by the International; the Local must purchase all of its supplies from the International; the International has the power to transfer members and, for various reasons, revoke, suspend or forfeit the Local's charter; the International, in the event of suspension or revocation of the Local's charter, or if the Local shall become "defunct", has a right to the funds and property of the Local; the International holds the power of discipline, including the placing of the Local in trusteeship for various reasons, revocation or suspension of the Local's charter, suspension of its officers,

and the exercise of judicial powers over its conduct; the Local may not engage in any strike, boycott or lawsuit without the approval of the International; the Local cannot enter into any collective bargaining agreement without the approval of the International; the International, in its sole discretion, can change the jurisdiction of the Local; the International prescribes policy and procedures for the trial and removal of local officers in the event of wrong-doing; the International can require the Local to arbitrate a dispute with an employer; the International establishes the fiscal year of the Local; the International, at its sole discretion, can deny membership to a person; the International, in its sole discretion, can refuse to permit a person to join a local; the International may merge locals at will; the International requires all officers of the Local to be bonded; the International prescribes strike procedures; all strike benefits are controlled and paid by the International; the Local may not amend its by-laws without the approval of the International; the Local may not dissolve without the approval of the International; the Local may not disaffiliate without the approval of the International; in the event of dissolution or disaffiliation, all of the assets of the Local become the property of the International, and under no circumstances is the Local allowed to distribute the assets to its members; the number and kind of officers of the Local, and their terms of office, are prescribed by the International; dues of the members of the Local and the effect of delinquency are prescribed by the International; the International requires the Local to report regularly with respect to its financial affairs; the International has the unprohibited right to audit the books of the Local.

On March 31, 1970, the Local and a number of motor carrier companies with St. Louis terminals were parties to a collective bargaining agreement. That agreement contained a no-strike clause. Upon the unfounded contention that the collective bargaining agreement had terminated, on April 1, 1970 the Local authorized and directed the driver employees (members of the

union) of each of the St. Louis motor carrier companies to strike and cease work. As a result of this work stoppage which continued until May 8, 1970, substantial damages were sustained by the motor carriers. Said carriers thereafter obtained judgments against the Local aggregating approximately $6,000,000.00. See *Motor Carriers Council of St. Louis, Inc., et al. v. Local Union No. 600, etc.*, 370 F.Supp. 461 (E.D.Mo. 1972), aff'd 486 F.2d 650 (8th Cir. 1973); and 384 F.Supp. 214 (E.D.Mo. 1974) aff'd 516 F.2d 316 (8th Cir. 1975).

On September 4, 1976, the Local, characterizing itself as a "voluntary unincorporated labor organization," filed a voluntary petition for bankruptcy. The International did not join in that filing. At the time of said filing, the balance due the various motor carrier judgment creditors, with interest, was in excess of $6,000,000.00. The Local scheduled the judgments as debts in its bankruptcy petition along with assets totalling approximately $60,000.00.

On October 5, 1976, 59 motor carrier judgment creditors, your Petitioners, filed their joint Motion to Set Aside and Vacate the Adjudication of Bankruptcy and to Dismiss the Voluntary Petition for Bankruptcy filed by the Local. That Motion contended that the Local is not a proper "person" for purposes of bankruptcy and that the Local is not an entity sufficiently autonomous from the International to be admitted to bankruptcy without the joinder of the International. On November 1, 1976, the Bankruptcy Court entered its Order overruling said Motion. In conjunction with said Order, the Bankruptcy Court filed its Memorandum Opinion (Appendix C hereto, infra, p. A-22) wherein the court concluded that the Local is an "association" and, therefore, a "corporation" and "person" within the meaning of the Bankruptcy Act. The court also held the Local to be sufficiently autonomous from the International to be able to file a voluntary petition in bankruptcy without joinder therein by the International.

The Petitioners timely appealed to the District Court for the Eastern District of Missouri, urging that the Bankruptcy Court had erred in its determination of the issues presented in the Motion to Set Aside and Vacate the Adjudication of Bankruptcy. On June 20, 1977, the District Court entered its Order reversing the opinion of the Bankruptcy Court. In the Memorandum Opinion filed in conjunction with said Order (Appendix B hereto, infra, p. A-14), the District Court concluded that the Local is not a "person" within the meaning of the Bankruptcy Act. So ruling, the District Court declined to consider whether or not the Local and International must be considered as one for bankruptcy purposes.

The Local appealed to the United States Court of Appeals for the Eighth Circuit and that Court, in its Opinion of May 19, 1978 (Appendix A hereto, infra, p. A-1), vacated the judgment of the District Court. Holding the Local to be a "person" for the purposes of bankruptcy and an entity sufficiently autonomous from the International so as to permit the filing of a voluntary petition in bankruptcy without joinder therein by the International, the Court of Appeals ordered the Local's voluntary bankruptcy petition reinstated.

On June 12, 1978, Petitioners timely filed their Petition for Rehearing or, in the Alternative, Motion for Hearing by the Court En Banc. Said Petition for Rehearing or, in the Alternative, Motion for Hearing by the Court En Banc was denied by the Eighth Circuit Court of Appeals on June 20, 1978.

REASONS FOR GRANTING THE WRIT

The decision of the Eighth Circuit Court of Appeals in the instant case (Appendix A hereto, infra, p. A-1) has been rendered in total disregard of the evident irreconcilable conflict it creates between the substantial body of federal labor law which has been enacted by Congress and the equally weighty legislation that has developed in the area of the law governing bankruptcy proceedings. The issues at bar, accordingly, take on the utmost significance for, though the ruling of the Court below now declares a local labor organization to be an autonomous "person" under the Bankruptcy Act, the opinion fails to specify how this newly recognized "person", once having availed itself of the provisions of the Act, is to continue to function in its more traditional sphere of operation, the arena of labor-management relations. The Court below, in reaching its conclusion that a local labor organization may avail itself of the Bankruptcy Act, ignores the over-riding consideration that Congress has not, either in the Bankruptcy Act or in any of the various labor laws, made provision for a mechanism for dealing with even the most basic issues raised by the admission of a local labor organization to bankruptcy. Hence, the issues at bar assume the greatest importance in respect of a compatible administration of the various federal labor laws and the Bankruptcy Act. The decision of the Court of Appeals in the instant case disrupts that compatible administration and inserts, by judicial determination, new, extraneous and conflicting elements in the legislative structures previously constructed by the Congress. Furthermore, the decision determines an important question of Federal law which has not been, but should be, settled by this Court.

I

The Court of Appeals has concluded that the Local, a self-proclaimed voluntary labor organization, is a "person" within the meaning of the Bankruptcy Act, 11 U.S.C. § 1, et seq., and, therefore, is entitled to the benefits of that Act as a voluntary bankrupt.[1] In making this determination, the Court below has hammered the proverbial square peg into a round hole.

The decision of the lower court is predicated on the notion that the Local is possessed of powers and privileges of private corporations not possessed by individuals or partnerships. However, nowhere in its opinion are the powers and privileges allegedly possessed by the Local enumerated, nor does the Court reveal the source of those powers and privileges. Instead, relying upon the cases of *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922) and *United States v. White*, 322

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[1] In Section 4(a) of the Bankruptcy Act (11 U.S.C. §22(a)) Congress has declared who is eligible to file a voluntary petition in bankruptcy:

> "Any person, except a municipal, railroad, insurance or banking corporation or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt."

In its opinion below the Court of Appeals looks to the Act's definition of "Persons" which provides that " 'Persons' shall include corporations . . ." (11 U.S.C. §1(23)). The Court then examines the Act's definition of "Corporation" (11 U.S.C. §1(8)):

> " 'Corporation' shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument."

and concludes that the Local is an unincorporated association which has "any of the powers and privileges of private corporations not possessed by individuals and partnerships" and, hence, is a "person" amenable to bankruptcy.

U.S. 694 (1944), the Court of Appeals summarily concludes that under federal law the Local has powers and privileges of a private corporation not held by an individual or a partnership.[2]

The analysis of the Court below ignores the fact that private corporations derive their powers from the sovereign which creates them, either by *state law* or Act of Congress. Fletcher, *Cyclopedia of Private Corporations,* (Perm.Ed.) Vol. 6 §2475, p. 288. State laws differ, as each state is entitled to determine for itself which powers and privileges to grant to corporations chartered by it. Just as a private corporation cannot have or exercise any powers or privileges without a grant of the same by its state of incorporation, it follows that an *unincorporated* body cannot have, nor can it exercise, any of the unique powers granted by a state to private corporations absent a similar grant to it *by such state*. Because the Act's definition of "corporation" speaks of bodies possessing the requisite powers and privileges of private corporations, whether or not the particular body in question does possess such unique powers and privileges can only be determined by reference to the law of the state in which

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[2] That reliance is misplaced, for this court narrowly confined the scope of its holdings in both *Coronado Coal* and *White*.

In *Coronado Coal*, this Court held only that the suability of the Mine Workers Union, for purposes of the Sherman Anti-Trust Act, was "merely a procedural matter," and that as a matter of substantive law, because the members of that union had engaged in a combination doing unlawful injury and had created a self-acting body with great funds to accomplish that purpose, the funds which they had accumulated should be made to satisfy claims for injuries unlawfully caused in carrying out their unlawful purpose. This ruling hardly justifies a determination which would permit the local to seek refuge from the consequences of its wrongdoing in the sanctuary of voluntary bankruptcy.

In *White*, a contempt proceeding, this court specifically limited its attention "solely to the right of an officer of a union to claim the privilege against self-incrimination" and expressly declined to offer a "complete delineation of the legal status of unincorporated labor unions" or an opinion "as to the necessity of considering them as separate entities apart from their members for purposes other than the one posed by the narrow issue in this case." 322 U.S. 694, 697.

the body is located, if for no other reason than that it is the law of *that* state which spells out the powers and privileges possessed by private corporations in that state. To hold otherwise is to say that *every* unincorporated association can bootstrap itself into the relief provided by a voluntary bankruptcy simply by conferring upon itself the powers and privileges referred to in Section 1(8) by means of the contract between its members (in this case the Local's constitution and by-laws).

The Court of Appeals rests its decision upon the broad conclusion that federal law controls the interpretation of federal statutes. At issue in the instant case, however, is not a question of statutory interpretation, or even the classification of a particular body, but rather whether a particular unincorporated body has, in fact, been granted by the state of its domicile any of the powers and privileges of private corporations within that state. Thus, in analyzing whether a particular body is a "corporation" within the meaning of the Act, the threshold effort must be directed to an examination of the powers and privileges invested in that body. That investiture must come from the state of the body's domicile in the case of unincorporated associations just as it must come from that sovereign in the case of incorporated bodies. Once reference is made to state law for a determination of the powers and privileges granted to a particular body, *then* the inquiry may shift to whether those powers and privileges place the body within one of the categories of organizations which Congress has declared eligible for bankruptcy. The Act's reference to "unincorporated associations" does not confer the uniquely corporate powers and privileges referred to in Section 1(8) upon such a body; it only provides a relief mechanism for such bodies that have received a grant of the necessary powers and privileges under the law of their state of domicile. Looking to the law of Missouri, the state of the Local's domicile, it is crystal clear that the state has not granted voluntary labor organizations domiciled there any of the powers and privileges peculiar to the nature of private corpora-

tions. *Forest City Mfg. Co. v. International Ladies Garment Workers Union*, 111 S.W.2d 934 (Mo.App. 1938).

In addition to the foregoing, the Court below has lost sight of the fact that its decision places the Local into a category of bodies which the Congress has labeled "corporations". Logic would dictate that if an organization is going to be placed within this category, then it ought to fit the general mold of this category.

Careful scrutiny of the language of Section 1(8) of the Act by courts in the past has led them to conclude that those unincorporated associations which properly fall within the scope of the Act's definition of "corporation" generally have joined together, at least in part, for some common business or commercial purpose. *Pope & Cottle Co. v. Fairbanks Realty Trust*, 124 F.2d 32 (1st Cir. 1941); *Associated Cemetery Management, Inc. v. Barnes*, 268 F.2d 97 (8th Cir. 1959).[3] Clearly the Local does not meet this test. The *raison d'etre* of a union is to represent its members in labor-management relations; any financial or business activities conducted by a union are merely ancillary to this overriding purpose.

Furthermore, Congress has included in the Act's definition of "corporation", alongside "unincorporated associations", partnership associations having subscribed capital, joint-stock companies and businesses conducted by trustees. Thus, the words in question do not stand alone; they gather meaning from the words around them, and they should be understood in the same sense. *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303 (1961). In *Jarecki*, this Court noted that this ancient rule of construction, *noscitur a sociis*, ". . . is often wisely applied where a word is

[3] The Court below attempts to minimize the persuasiveness of these decisions on the faulty premise that those cases should be restricted to involuntary bankruptcy situations. But this flatly ignores the express recognition in *Associated Cemetery*, that the decision therein was not dependent upon the nature of the proceeding.

capable of many meanings in order to avoid the giving of an unintended breadth to the Acts of Congress." Id. at 307. Application of the rule in the case at bar is particularly appropriate in light of the legislative history of this section of the Act.[4] That legislative history makes it crystal clear that Congress did not intend to authorize *every* unincorporated association to obtain the benefits of bankruptcy. The Court of Appeals' decision to the contrary imparts a breadth to the Act never contemplated or intended by Congress.

It is evident from the complete lack of any legislative mechanism built into the Act designed to handle the major asset of a union, i.e., the collective bargaining agreement, that Congress never intended to give the scope to Section 1(8) of the Bankruptcy Act that the decision of the Court of Appeals has done. Congress has made no provision for a trustee in bankruptcy to administer a collective bargaining agreement during a pending bankruptcy proceeding. A trustee would be most hestitant to administer such an agreement in light of the labor laws that clearly preserve the rights of members to choose their bargaining representatives—obviously a trustee in bankruptcy would not be chosen by those members. Moreover, it is unheard of

[4] The following appears in the Report of the Committee on the Judiciary (H.R. Report No. 877) which accompanied the 1926 proposed amendment of the Bankruptcy Act:

> "The following is a statement showing in detail wherein the proposed bill changes existing law, with reasons therefor . . .
>
> "To the definition given in present law of the word 'corporations' has been added the following words: 'joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees, wherein beneficial interest or ownership is evidenced by a certificate or other written instrument.'
>
> *"The object of this amendment is to include within the scope of the operation of the bankruptcy law, beyond any doubt, those businesses conducted under the guise of so called trusts."* (House Report No. 877, 69th Congress, 1st Session) (Emphasis supplied.)

that a corporation may go bankrupt, discharge its debt under a contract and yet continue on with all of the benefits of that contract. But that will be the effect in the instant case if the Local is held entitled to become a bankrupt. This is so because no trustee in bankruptcy would risk rejecting a collective bargaining agreement knowing that, by doing so, he may be depriving union members of collective bargaining rights guaranteed under the labor statutes. Though one court has allowed a trustee in bankruptcy to reject a collective bargaining agreement on behalf of a bankrupt business, *Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO v. Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir.), this is a far cry from a trustee of a *union* in bankruptcy being able to reject a collective bargaining agreement when the *continuing* rights of the union members are involved. There being no provisions, either in the labor statutes or the Bankruptcy Act, for dealing with the complex and far-reaching problems created by a union seeking an adjudication in bankruptcy, Petitioners respectfully submit that Congress did not intend to allow such an adjudication to upset the delicate balance which it has established in the area of labor-management relations or to defeat the purpose and philosophy of an adjudication in straight bankruptcy. The Court of Appeals should not be permitted to override the policy considerations which have moved Congress to act in these separate and distinct fields of law. The concept of straight bankruptcy is totally inconsistent with the notion of a *continuation* of rights. Inherent within the nature of an adjudication of straight bankruptcy is a determination that the adjudicated entity shall cease to exist and the assets of that entity shall be collected by the trustee to be distributed by him among the creditors of the bankrupt. But the primary asset of a union, the collective bargaining agreement, is not susceptible to collection and distribution by the trustee, and, therefore, the underlying principle of straight bankruptcy is necessarily defeated. Under the ruling of the Court of Appeals, the Local will be permitted to retain its principal asset and, at the same time, discharge all of its debts, and its creditors will receive nothing—all in contravention of the purposes and aims of an adjudication in straight bankruptcy.

II

In its cursory one paragraph ruling on the relationship of the Local to the International, the Court of Appeals has summarily concluded that the Local "has an adequate autonomous legal existence to allow it to file separately under § 4(a)." But this determination completely ignores the facts respecting that relationship. Those facts unquestionably demonstrate that the Local is so inextricably linked with and is such an integral part of the International that the former may not obtain the benefits of voluntary bankruptcy absent joinder therein by the latter.

The function of a union is to enter into collective bargaining agreements on behalf if its members and to apply economic muscle to bring about better working conditions. In the instant case, the International negotiates, on behalf of all of its locals, a National Master Freight Agreement. These negotiations are conducted primarily in Washington, D.C. by the National Negotiating Committee which is appointed by the International President. The National Master Freight Agreement contains provisions that apply to each local throughout the country. Supplements are also negotiated to resolve regional issues. Thus, for the Central States Region (which includes St. Louis) there is a Central States supplement, for the Southern Region, a Southern States supplement, and so on for each of the other regions. These supplements, though regional in nature, are negotiated by the National Negotiating Team, not by the locals. No local has any say as to whether the National Master Freight Agreement and the regional supplements thereto will or will not be accepted. The ratification vote on that National Agreement and *each* of the regional supplements is made by *all* of the hundreds

of thousands of Teamsters members throughout the United States. Thus, the Central States supplement (which applies to St. Louis) is voted on not only by members in the Central States Region, but also by members in the Southern States Region and all of the other regions. Consequently, it is possible that all members living in the Central States could reject the Central States supplement, and yet the same could be approved by the vote of the other members throughout the United States. Conversely, members living in the Central States could vote for the Central States supplement, but the same could be rejected as a result of the vote of the entire membership nationwide. In light of the foregoing, it is crystal clear that the collective bargaining agreement upon which Petitioners originally sued and ultimately obtained their judgments is not, in any way, a local union contract; rather, it is, in all respects, a contract of the International and its entire membership. Moreover, the International stands ever ready to enforce its National Master Agreement and the regional supplements through the application of its astronomical strike fund which is accumulated by shifting funds from the locals to the International treasury. The International may use that fund in any proportion it desires, in any locality it chooses, without regard to equality among locals. If a company in a particular region should engage in a lockout, the International alone makes the determination as to whether the vast strike fund under its sole control will be made available to crush that company. Thus, if the International can apply all of its power and assets in connection with a lockout by a company that is a party to the national collective bargaining agreement in order to bring that company to its knees, is it not fair and equitable that when a judgment is obtained by a company under said collective bargaining agreement for breach of a no-strike clause contained therein said judgment should not be subject to discharge in bankruptcy unless the International is a part of that bankruptcy proceeding? There can be no possible rationale for the contention that when a judgment is obtained under this International negotiated and controlled collective bargaining agreement it can be discharged in bankruptcy and the International can walk away with its assets untouched. Such a contention is not only shocking to one 's sense of fairness and justice, but, if adopted, it will completely destroy the equilibrium which courts and legislatures have striven so long to achieve in the labor-management area.

The foregoing amply demonstrates that the Local is no more than a fiction and, at most, a division or appendage to assist the International in carrying out its purposes. In the area of corporate law, the Courts have long recognized the concept of disregarding the corporate fiction when the ends and purposes of justice are best served to do the same. See Fuller, *Legal Fictions*, 25 Ill.L.Rev. 363 (1930).[5] This concept of disregarding the corporate fiction has often been utilized by the courts in bankruptcy situations. In *Soviero v. Franklin National Bank of Long Island*, 328 F.2d 446 (2d Cir. 1964), a bankruptcy proceeding, the court considered the relationship of fourteen separate companies and held that for bankruptcy purposes:

> "* * * there existed a unity of interest and ownership common to all corporations, and * * * to adhere to the separate corporate entities theory would result in an injustice to the bankrupt's creditors.
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[5] At page 9 of his treatise, *The Disregard of the Corporate Fiction and Allied Problems*, (1927), Professor Wormser writes:

> "Since the element of personality is an extraordinary privilege conferred upon the corporation by the law, and involves the employment of a fiction, it follows that 'it must be used for legitimate business purposes and must not be perverted' and, just as night follows day, so the courts should and will disregard this fiction 'when it is urged for an intent or purpose not within its reason and policy.' * * * *All fictions of law are introduced for the purpose of convenience and to subserve the ends of justice. When they are urged to an intent and purpose not within the reason and policy of the fiction, they must be disregarded by the courts.*" (Emphasis supplied.)

"* * * [By] ignoring the corporate entity of subsidiary corporation, * * * only then could *'all the creditors receive that equality of treatment which it is the purpose of the bankruptcy act to afford.'*" Id. at pages 448-449

In *Stone v. Eacho*, 127 F.2d 284 (4th Cir. 1942), while holding two corporations to be a single entity for the purpose of bankruptcy proceedings, the court noted:

"It is well settled that courts will not be blinded by corporate forms nor permit them to be used to defeat public convenience, justify wrong or perpetrate fraud, but will look through the forms and behind the corporate entities involved to deal with the situation as justice may require." Id. at page 288.

The court in *Stone* went on to hold that the bankruptcy court has broad, equitable powers in determining the true identity of the bankrupt and should not hesitate to disregard a "fiction" when the facts so dictate.

A key to the "fiction" cases is a determination respecting the location of ultimate control. In the case at bar, it is clear that the International dictates when the local may enter a collective bargaining agreement, when the Local may strike, what the Local shall do with its assets, that upon dissolution or disaffiliation, the Local's assets must be turned over to the International, and that the Local cannot adopt or amend its own by-laws without the International's approval. Under these facts, can it truly be said that the kind of ultimate control which has historically motivated courts to disregard "fiction" does not lie with the International in its relationship with the Local? The Fourth Circuit Court of Appeals answered this question in the negative in *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. United States*, 275 F.2d 610 (4th Cir. 1960). Enroute to holding the same International involved in the instant case liable in a contempt proceeding, the Court of Appeals concluded that under the evidence and constitution the local *was not* an autonomous body, but merely a subdivision of the International subject to its control. In so holding, the Court stated, at page 614, as follows:

"This summary of the provisions of International's constitution bearing upon its control of the local is not exhaustive. The constitution gives the International control of many other details of the local's business and operations. What has been said, however, *should suffice to show that the local is no autonomous body, but a subdivision of International subject to International's control.*

"The provisions of International's constitution were before the District Court when its motion to quash the service was denied. It showed such extensive control and direction of the local as to warrant the conclusion that the local is a component of the International. *The local is the internal organization means which the International employs to keep its accounts of its membership, to collect its revenues, and to execute and enforce its policies.* If all of the other general and specific rights of control vested in International should prove insufficient to assure subserviance of the local in a particular matter, the right to suspend the charter and seize immediate control of a local which adopts an independent course must be effective." (Emphasis supplied.)

In support of its conclusion that the Local is autonomous from the International, the Court below relies on the fact that Petitioners have not previously sought to bind the International under the judgments obtained against the Local. But this begs the question of whether or not the Local and International are a single entity *for bankruptcy purposes.* The mere fact that Petitioners sued the Local and obtained judgments under Federal legislation relating only to the area of labor law (Section 301

of the Labor-Management Relations Act, 29 U.S.C. § 185) cannot have any relevancy respecting the issue of whether the Local is an autonomous entity *in matters involving its very existence*, sufficiently so as to permit it to institute voluntary bankruptcy proceedings without joinder therein by the International. There have been countless cases in which a parent corporation and its subsidiary, each subject to a separate suit and judgment, ultimately have been held to be a single entity in bankruptcy proceedings. In these cases, the courts have recognized that it is perfectly consistent to regard such corporations as separate for a variety of purposes, but unitary for purposes of bankruptcy. In *In Re Pittsburgh Rys. Co.*, 155 F.2d 477 (3rd Cir. 1946), the Pittsburgh Railways Company operated the entire Pittsburgh transportation system through the control of some 36 separate corporate companies (just as in the case at bar the International carries out its purposes through the domination and control of hundreds of locals throughout the country). The Pittsburgh Railways Company was insolvent, while the underlying companies which it used to operate the transportation system were solvent. In *Pittsburgh*, the Court, in holding that the Pittsburgh Railways Company and all of the separate companies which it directed and controlled were one for the purpose of the proceeding, stated:

> *"To talk legal effect instead of fanciful figures of speech, the corporate fiction can be given effect in some instances and with perfect consistency, disregarded in other instances.* Courts have recognized this. As we have already said in the Dipple case, the courts recognized the separate existence of these corporate groups because the question was one of rights and duties among themselves. Since the parties had dealt with each other on the basis of separate personalities that effect was given to the transaction as to those who were parties to it. In this case the relationship of all concerns in this transportation enterprise are with the

> creditors and with the public, *and the considerations involved in recognizing separate corporate entities are quite different.* Id. at page 484. (Emphasis supplied.)
>
> * * * * * * *
>
> *"Our conclusion is that the facts of the present case call for the treatment of this great transportation system as one entity for purposes of reorganization, regardless of the elaborate jigsaw puzzle arrangement of all the underlying companies which have gone into it."* Id. at page 485. (Emphasis supplied.)

Clearly, in *Pittsburgh*, separate judgments could have been rendered in civil suits against any one of the various companies involved. But for the purpose of the *bankruptcy proceeding* there involved, the Court acknowledged the realities of the inter-relationships (unlike the Court below) and treated all of the companies as *one single entity*.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari be granted.

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APPENDIX

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 77-1542

Highway & City Freight Drivers, Dockmen and Helpers, Local Union No. 600, a voluntary unincorporated labor organization,
Appellant,

v.

Gordon Transports, Inc., et al.,
Appellees.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: December 15, 1977

Filed: May 19, 1978

Before LAY and BRIGHT, Circuit Judges, and SCHATZ,* District Judge.

LAY, Circuit Judge.

In this case we are asked to decide whether a labor union is a "person" who may file a petition for voluntary bankruptcy under § 4(a) of the Bankruptcy Act, 11 U.S.C. § 22(a). In 1970

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* Albert G. Schatz, United States District Judge, District of Nebraska, sitting by designation.

Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 (hereinafter the Union) engaged in an unlawful strike which resulted in a judgment of approximately six million dollars against it, and in favor of more than 60 motor freight carrier companies. *See Motor Carriers Council of St. Louis, Inc. v. Local Union No. 600*, 370 F. Supp. 461 (E.D. Mo. 1972), *aff'd*, 486 F.2d 650 (8th Cir. 1973) (liability); *Motor Carriers Council of St. Louis, Inc. v. Local Union No. 600*, 384 F. Supp. 214 (E.D. Mo. 1974), *aff'd*, 516 F.2d 316 (8th Cir. 1975) (damages).

After filing its voluntary petition the Union was automatically adjudged a bankrupt pursuant to § 18(f) of the Act, 11 U.S.C. § 41(f). Gordon Transports, Incorporated, and 59 other motor carrier companies (the motor carriers) then sought to have the adjudication vacated and the petition dismissed on the ground the Union was not a person for purposes of the Bankruptcy Act. The motor carriers also urged that the Union was not a separate entity independent from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the International) and that therefore the bankruptcy proceedings were improper without the joinder of the International. The bankruptcy court, the Honorable Robert E. Brauer presiding, ruled that the Union was an "association" that came within the Act's definition of a corporation and was, therefore, a person who could file a petition for voluntary bankruptcy. On review the district court, the Honorable H. Kenneth Wangelin presiding, found that a labor union is not a "business oriented entit[y] with powers similar to corporations" and thus neither a corporation nor a person under the Act. The district court also ruled that nothing within the legislative history supported the argumeant that Congress' intention was to include unions within the Act. The order of the bankruptcy judge was reversed and the voluntary petition in bankruptcy was ordered dismissed. *In re Highway & City Freight Drivers Local 600*, 432 F. Supp. 1326 (E.D. Mo. 1977).

We vacate the judgment of the district court and hold that the Union is a person under the Bankruptcy Act.

Section 1 of the Act, 11 U.S.C. § 1, provides:

> The words and phrases used in this title and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:
>
> . . . .
>
> (23) "Persons" shall include corporations, except where otherwise specified . . . .

The word corporation is also defined in § 1 of the Act.

> (8) "Corporation" shall include *all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include* partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, *unincorporated companies and associations,* and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument. . . .
>
> (Emphasis added).

The issue we face is, therefore, whether the Union is an association which has any of the powers and privileges of private corporations not possessed by individuals or partnerships within the meaning of the Act. We conclude that it is.

The present definition of a corporation under the Act has remained substantially unchanged since the 1926 amendments of the Act. *See* Act of May 27, 1926, § 1(6), 44 Stat. 662. At that time the word association was generally understood to "signify a body of persons united without a charter, but upon the methods and forms used by incorporated bodies for the

prosecution of some common enterprise." *Hecht v. Malley*, 265 U.S. 144, 157 (1924), *quoting* 1 Abb. Law Dict. 101 (1879). *See also In re Poland Union*, 77 F.2d 855, 856 (2d Cir. 1935). The Supreme Court had, in fact, recognized that unions "are, as has been abundantly shown, associations existing under the laws of the United States, of the Territories thereof, and of the States of the Union." *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 392 (1922).[1]

It is also evident that under federal law[2] the Union, as an association, has powers and privileges of a private corporation not held by an individual or a partnership. In *Coronado Coal* the Supreme Court held that unincorporated labor unions such as the United Mine Workers were distinct entities suable in federal court. In reaching this result the Court noted that:

> Undoubtedly at common law, an unincorporated association of persons was not recognized as having any

[1] A 1927 article on the 1926 amendments to the Bankruptcy Act cited a then contemporary work on associations in which trade unions were listed as one of several entities which were commonly thought of as associations. McLaughlin, *Amendment of the Bankruptcy Act*, 40 Harv. L. Rev. 341, 361 (1927).

[2] The motor carriers urge that the state law of Missouri should be looked to in answering this question. We must disagree. Federal law clearly controls the interpretation of federal statutes. *See, e.g., Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456-57 (1957); *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, 315 U.S. 447, 471-72 (1942) (Jackson, J., concurring); *Board of Trade v. Johnson*, 264 U.S. 1, 10 (1924); J. Moore, Moore's Manual § 4.21 (rev. ed. 1977). Some areas of the Bankruptcy Act find convenient reference to state law. This "state classification test," *see First Am. Bank & Trust Co. v. George*, 540 F.2d 343, 346-47 (8th Cir.), *appeal dismissed*, 429 U.S. 1011 (1976), has often been used in determining whether an entity falls within one of the exceptions to the inclusive provisions of § 4(a). *See Sims v. Fidelity Assurance Ass'n*, 129 F.2d 442 (4th Cir. 1942), *aff'd*, 318 U.S. 608 (1943). State law has been found particularly appropriate with respect to the exceptions to § 4(a) since the enumerated entities are typically highly regulated by the states and since the states are responsible for the liquidation of the excepted entities. *See id.* at 448-51; *In re Union Guar. & Mortgage Co.*, 75 F.2d 984, 985 (2d Cir.), *cert. denied*, 296 U.S. 594 (1935).

When dealing with many sections of the Bankruptcy Act, the "desirability of a uniform rule is plain." *Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943) (question of what law should govern the issuance of commercial paper). The eligibility of a union for voluntary bankruptcy cannot depend upon the state in which it happens to be located. As Judge Brauer reasoned:

> It would assuredly be anomolous [*sic*] to permit the filing of a voluntary petition in bankruptcy by a labor organization situated in some one of those states, but deny that filing to one situated in Missouri simply because of Missouri's adherence to old common law concepts . . ., an attitude said to be sorely in need of change to further justice to both suers and the sued.

> other character than a partnership in whatever was done, and it could only sue or be sued in the names of its members, and their liability had to be enforced against each member. But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. . . . They have been given distinct and separate representation and the right to appear to represent union interests in statutory arbitrations, and before official labor boards.

Id. at 385-86 (citations omitted.)[3]

Later, in *United States v. White*, 322 U.S. 694 (1944), the Court elaborated on the characteristics of a labor union.

> Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual

[3] The Supreme Court also observed that "[n]o organized corporation has greater unity of action [than the union], and in none is more power centered in the governing executive bodies." *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 385 (1922).

> activity. . . . The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members. Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees.

Id. at 701-02 (footnote omitted).[4]

Thus, under federal law, a union undeniably possesses some of the unique powers or privileges of a private corporation.

Basic principles of statutory construction lend support to a broad construction of the definition of a corporation under § 1(8) of the Act. Section 1(8) uses the word "includes" when setting out the types of organizations that come within the definition rather than the word "means."[5] When a statute is phrased

[4] Union members. like shareholders of a private corporation are granted limited liability by § 301(b) of the National Labor Relations Act, 29 U.S.C. § 185(b). Subsection (b) of 29 U.S.C. § 185 provides in part:

> Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

[5] The 1926 amendments to the Act used the word "means" in defining corporations. *See* Act of May 27, 1926, § 1(6), 44 Stat. 662. The word "includes" was substituted in the 1938 amendments to the Act. *See* Act of June 22, 1938, § 1(8), 52 Stat. 840.

in this manner, the fact that the statute does not specifically mention a particular entity (in this case labor unions) does not imply that the entity falls outside of the definition. *See Pfizer, Inc. v. Government of India*, — U.S. —, 98 S.Ct. 584, 587-88 (1978); *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 125 n. 1 (1934).

Furthermore, a union is not excluded by the literal language of § 4(a) from filing a voluntary petition in bankruptcy. The section provides that any "person" *except* municipal, railroad, insurance, and banking corporations and building and loan associations are entitled to the benefits of voluntary bankruptcy.[6] In interpreting § 4(a) the Second Circuit noted:

> When the words create a general inclusionary category there is greater reason, perhaps, to accept a literal meaning in the absence of any particular purpose which contradicts it. When the statute is couched in terms of an exception, however, the task is somewhat different, for in the case of an exception we can hardly assume that excluding a particular category from a general class was utterly without purpose. If we find that there was a legislative purpose for the general exception which does not fit the narrower exception at issue, a court may justifiably conclude that the

[6] The reasons for excluding the specific entities listed in § 4(a) were described by Congressman Sherley:

> There has been excepted out of the law *always* certain corporations—for instance, municipal, railroad, insurance, or banking corporations—on the theory that all of those corporations partook either of a public or quasi-public nature that did not warrant their estates being adjudicated through bankruptcy proceedings, and that it was wiser to hold them exempt from the law than to permit them to be thrown into bankruptcy by either voluntary or involuntary proceedings. This amendment does not, in that particular, change the law at all.

Hearings on H.R. 18694 Before Subcomm. No. 1 of the House Comm. on the Judiciary, 60th Cong., 2d Sess. (1909), *quoted in Israel-British Bank (London) Ltd. v. Federal Deposit Ins. Corp.*, 536 F. 2d 509, 514 (2d Cir.), *cert. denied*, 429 U.S. 978 (1976).

> exception at issue is without the statute. Thus, the normal rule of construction is that where words of exception are used, they are to be strictly construed to limit the exception.

Israel-British Bank (London) Ltd. v. Federal Deposit Insurance Corp., 536 F.2d 509, 512-13 (2d Cir.), *cert. denied*, 429 U.S. 978 (1976).[7]

Contrary to the district court, we find the bankruptcy court's interpretation of the Act is also supported by its legislative history. In its 1898 formulation a corporation was defined as meaning "all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association. . . ." Act of July 1, 1898, § 1(6), 30 Stat. 544.[8]

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[7] In *Israel*, the Second Circuit found that a foreign banking corporation was not a banking corporation for purposes of § 4(a) and permitted the foreign bank to file for voluntary bankruptcy. *Israel-British Bank (London) Ltd. v. Federal Deposit Ins. Corp., supra* at 514.

[8] Even under this more restrictive definition the meaning of a corporation was given a broad interpretation enabling entities which were not typical business enterprises to file for voluntary bankruptcy. In allowing an Odd Fellows lodge to file for bankruptcy a New York judge wrote:

> The bankruptcy law has prescribed what "bodies" or associations of persons shall be deemed a corporation within its meaning, and this law is paramount. That an association of a considerable number of men under a common name, with a constitution and bylaws, and with power to elect governing trustees, and recognized by the statutes of the state as a single body or "entity," and given power to own real and personal property and sue and be sued, and act by its trustees duly elected as a single body, is a *body* having some of the powers and privileges of private corporations not possessed by individuals or partnerships, cannot be doubted.

In re Carthage Lodge, No. 365, I.O.O.F., 230 F. 694, 701 (N.D. N.Y. 1916). *See also In re Sargent Lumber Co.*, 287 F. 154 (E.D. Ark. 1923); 1 Collier on Bankruptcy ¶ 4.06 (14th ed. 1974).

The 1926 amendment of the definition of a corporation was primarily designed to bring so-called Massachusetts Trusts, or common law business trusts, within the definition of corporation. *See* H.R. Rep. No. 877, 69th Cong., 1st Sess. 6 (1926). That effort, however, was not the only purpose of the legislation. Congressman Michener stated that:

> The principal changes are:
>
> (1) The meaning of the term "corporations" is broadened so as to *include* common-law trusts, and so forth.

67 Cong. Rec. 7675 (1926) (emphasis added). *See also* McLaughlin, *Amendment of the Bankruptcy Act*, 40 Harv. L. Rev. 341, 355-56 (1927).

Collier views the 1926 amendments as

> "meant to enlarge the statutory meaning of 'corporation' beyond its ordinary meaning" and [calling] for "a broad, inclusive construction of the language used." The five comprehensive classes of bodies, groups and businesses enumerated in the clause cover practically the whole range of private activities and enterprises, except those carried on by individuals as such and partnerships other than the specified type.

1 Collier on Bankruptcy ¶ 1.08, at 62 (14th ed. 1974) (footnotes omitted).[9]

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[9] As pointed out by the district court, one court has held that the word association does not add anything to the phrase unincorporated company in § 1(8). *Pope & Cottle Co. v. Fairbanks Realty Trust*, 124 F.2d 132, 136 (1st Cir. 1941). However, a commentator writing at the time the amendments were passed, observed:

> [I]t [the amended § 1(6)] says that "unincorporated associations" are corporations. This last term must be rejected as surplusage or else given a wider effect than the term "unincorporated company," because the courts, in trying to decide what is an unincorporated company within the meaning of Section 4 (b), have referred to unincorporated associations as a generic term, and have examined the question as to which of such associations were intended by the phrase unincorporated company.

McLaughlin, supra at 361.

We also note that the Act of June 22, 1938, 52 Stat. 840, struck out a reference to unincorporated companies in the partnership provisions of the bankruptcy statute. *See* 1 Remington on Bankruptcy § 92, at 161 (5th ed. 1950). Professor Remington noted that the result of the change was that:

> The approach now is similar to that of the Federal income tax provisions, under which syndicates, associations and enterprises having all the essential attributes of corporations are treated as if they were corporations; otherwise, as partnerships.

Id. at 161-62.

Thus, it appears that Congress meant to create a clear dichotomy between corporations and partnerships.

This overall history lends support to the position that Congress recognized that the 1926 amendments were intended to give additional breadth to the meaning of the term corporation. Clearly the Union is not liable as a partnership. There being no express history to indicate that it was to be excluded, we hold that the Act includes the Union as an unincorporated association.

The district court's emphasis that the Union does not qualify for voluntary bankruptcy since it is not a business enterprise organized for profit is not relevant to a voluntary petition for bankruptcy under § 4(a). Under § 4(b) only a "moneyed, business or commercial corporation" may be forced into involuntary bankruptcy. Section 4(a) is not similarly limited. *See* 1 Collier, *supra* ¶ 4.05[1], at 585. We recognize that dicta within *Associated Cemetery Management, Inc. v. Barnes*, 268 F.2d 97 (8th Cir. 1959), provides some support for the motor carriers' argument that only business oriented entities may file for voluntary bankruptcy. However, the clear language of the Act sets forth different standards for voluntary and involuntary bankruptcy. This fact was recognized by the court in the *Associated Cemetery* case when it observed:

> We recognize the distinction that exists between voluntary and involuntary proceedings in bankruptcy. By the explicit provisions of Section 4, sub. b (Title 11 U.S.C.A. § 22, sub. b), involuntary proceedings are limited to "natural persons (except a wage earner or farmer) and any moneyed, business or commercial corporation," with certain exceptions—whereas, "any person" (with certain exceptions), which, as we have seen, encompasses corporations, may be declared a voluntary bankrupt. Section 4, sub. a (Title 11 U.S.C.A. § 22, sub. a). Thus it is manifest that while any person or entity subject to involuntary bankruptcy may be adjudicated a voluntary bankrupt, the reverse is not necessarily true.

Id. at 104.

We now hold that the fact that an entity was not a "moneyed, business or commercial corporation" cannot be a controlling factor under § 4(a). The few cases which have passed on this question indicate that § 4(a) is not so limited. *See, e.g., In re Allen University*, 497 F.2d 346, 348 (4th Cir. 1974); *In re Philadelphia Consistory Sublime Princes Royal Secret 32° Ancient Accepted Scottish Rite*, 40 F. Supp. 645, 648 (E.D. Pa. 1941); *In re Michigan Sanitarium & Benevolent Association*, 20 F. Supp. 979, 985 (E.D. Mich. 1937), *appeal dismissed*, 96 F.2d 1019 (6th Cir. 1938); *In re Elmsford Country Club*, 50 F.2d 238, 239 (S.D. N.Y. 1931). Collier agrees.

> Subdivision *b* [of § 4] specifically states what classes of corporations are included within its terms. As the definition of "corporation" in § 1(8) is broad enough to include many unincorporated bodies, the confusing language "unincorporated company" employed in the former Act has been omitted. Charitable and even eleemosynary unincorporated groups, though within the definition of "corporation", are not subject, however, to involuntary bankruptcy under the terms of the subdivision, since they are not moneyed, business or commercial corporations.

1 Collier, *supra* ¶ 4.14, at 611 (footnotes omitted).

The motor carriers urge that policy reasons militate against the inclusion of the Union within § 4(a) of the Bankruptcy Act. Judge Brauer rejected this argument.[10] The district court did not address these considerations. We find the policy-based arguments unavailing here. Unless some *overriding* principle of public policy is shown to exist which demonstrates that the legislative purpose of the Act would be circumvented by our interpretation of the Act, these arguments are not germane to the court's statutory interpretation. We are aware of none here. Arguments addressed to the wisdom of a policy which would exclude unions from the Act are better made to Congress so a specific exemption could be created if so desired.

Finally, the carriers urge that the local union cannot be viewed as a separate entity from the International. The weakness of the motor carriers' position is pointed out by the fact that they sued only the local union and have not previously sought to bind the International under the judgment by reason of respondeat superior or on some alter ego theory. We find little merit to the argument that the International and the local are not sufficiently distinct entities under the Bankruptcy Act; we hold the local has an adequately autonomous legal existence to allow it to file separately under § 4(a). The voluntary petition and the consequent adjudication do not prejudice the motor carriers' rights to seek relief against the international union on the basis of the theories noted above.[11]

Since, as we have found, the Union is a person within the meaning of the Act, the bankruptcy judge properly rejected the motor carriers' motion to set aside the adjudication of bankruptcy. Accordingly, the district court's order setting aside the adjudication is vacated and the bankruptcy petition is ordered reinstated.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[10] Judge Brauer cogently observed:

> Movants argue, however, that the *spirit* of the Act militates against inclusion of such an organization within its meaning, arguing that Section 301 of the Labor Relations Act 1947, supra, was enacted to insure labor and industrial peace and harmony and stability; that to permit bankruptcy and a discharge in bankruptcy of a debt, based upon, for example, damages arising from a breach of a collective bargaining agreement, is inimical to that peace and harmony and stability. The argument presumes that, if bankruptcy may be availed of, a labor organization would be wont to break its collective bargaining agreement(s) with impunity, comforted in the knowledge that a bankruptcy discharge would relieve it from the full consequences of the breach.
>
> I have serious doubts that a labor organization, any more than any other party to a contract (i.e., an individual, or a private corporation, as any of the movants, who may concededly file a voluntary petition in bankruptcy), will behave any more irresponsibly in respect to its duties, obligations and liabilities to third persons simply because bankruptcy may provide some relief against the full consequences of such behavior. Experience has not demonstrated, generally, that the availability of bankruptcy relief has been an important, decisive factor in the course of conduct of one's ordinary human and business affairs with another.
>
> Further, the Bankruptcy Act itself penalizes certain conduct, by provisions for the denial of a bankruptcy discharge generally, and by provisions for the non-dischargeability of debts. Sections 14, and 17, of the Bankruptcy Act, 11 U.S.C. 32, and 35. These provisions would seem to me to deter bad faith breaches of collective bargaining agreements if the haven of the Bankruptcy Act was thought to shield a labor organization from the results of that bad faith. And, even of more importance: if the availability of bankruptcy to a labor organization were shown to create strife and unrest and discord, Congress can easily and quickly exclude, by specific provision in the Act, the availability of bankruptcy to a labor organization, as it has already done to various entities by Section 4 of the Act, supra.

[11] The motor carriers imply that the local cannot be a bankrupt since, by reason of its relationship with the International, it is not insolvent. This contention is erroneous. A petitioner filing a voluntary petition need not be insolvent to allow its creditors to divide its assets. *In re Fox West Coast Theatres,* 88 F.2d 212, 217-18 (9th Cir.), *cert. denied,* 301 U.S. 710 (1937); *In re Foster Paint & Varnish Co.,* 210 F. 652, 653 (E.D Pa. 1914); 1 Collier, *supra* ¶ 4.03, at 579.

APPENDIX B

In the United States District Court for the
Eastern District of Missouri
Eastern Division

In the Matter of Highway and City Freight Drivers, Dockmen, and Helpers, Local Union No. 600, a Voluntary Unincorporated Labor Organization, Bankrupt.	In Bankruptcy Case No. 77-131 C (3).

MEMORANDUM

(Filed June 30, 1977)

This is an appeal from an order of the Bankruptcy Court refusing to set aside an adjudication of bankruptcy. In April of 1970 the Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600 (hereinafter "Local 600") engaged in an unauthorized strike. The strike violated the Union's contract and resulted in a judgment in October of 1974 on behalf of more than sixty motor carrier companies.[1] *See Motor Carrier's Council of St. Louis, Inc. v. Local Union No. 600*, 370 F.Supp. 461 (E.D. Mo. 1972). As a result of this judgment Local 600 has filed a petition in bankruptcy.

Fifty Nine (59) of the Motor Carrier Judgment Creditors moved the Bankruptcy Court to set aside the adjudication of bankruptcy and dismiss the Union's petition. The motion was based upon two theories: (1) a labor union cannot be considered

[1] The judgments total approximately six million dollars.

a "person" under section 4(a) of the Bankruptcy Act, 11 U.S.C. §22(a); and (2) Local 600 has no existence independent of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, thus that entity must join in any bankruptcy proceedings. The primary question, whether unions are entitled to initiate voluntary bankruptcy proceedings, is a question of first impression.

Only "persons" are entitled to the benefits of voluntary bankruptcy.[2] A "person" is defined to include "corporations".[3] "Corporation" is defined to:

> include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies *and associations*, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument. (Emphasis added). 11 U.S.C. §1(8).

Local 600 takes the position that unions should be considered "associations" under section 1(8). Relying upon *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922) and other authority, the Bankruptcy Court held that Local 600 is an association under the Act.

The first step or analysis must be to examine the language of the statute. It is arguable that the word association can normally be construed to include labor unions. *Cf. Coronado Coal Co.*,

[2] Section 4(a) of the Act provides that: "Any person, except a municipal, railroad, insurance or banking corporation or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt. 11 U.S.C. §22(a). All statutory references are to the Bankruptcy Act unless otherwise noted.

[3] §1(23) of the Act, 11 U.S.C. §1(23).

supra. However, the language of the statute must be construed in context. *Pennington v. Coxe*, 6 U.S. 16, 27, 2 Cranch 34 (1804). Section 1(8) defines corporations. It refers to business oriented entities with powers similar to corporations. A labor union is not generally considered such an entity.

The courts construing section 1(8) previously have avoided the temptation to give the term association a broad definition.[4] One court has expressed an even more restrictive view. "We doubt very much if the words 'and association' add anything to the words 'unincorporated companies' used in the same phrase". *Pope & Cottle v. Fairbanks Realty Trust*, 124 F.2d 132, 136 (1st Cir. 1941).

In general, however, courts have looked for entities with purposes like those of a monied business or corporation, "conducting their affairs somewhat after the pattern of corporations." *Associated Cemetery Management, Inc. v. Barnes*, 268 F.2d 97, 103 (8th Cir. 1959). Unlike a corporation a labor union does not pool capital for the purposes of investment and profit. Its assets are mainly its members who can collectively obtain bargaining leverage in labor-management negotiations. Its other financial functions are ancillary to this purpose.

Also, section 1(8) of the Act is one of two sections that defines person. In those two sections more than ten entities are listed,[5] none of which are "labor organizations". The maxim

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[4] *See, e.g., Associated Cemetery Management, Inc. v. Barnes*, 268 F.2d 97 (8th Cir. 1959), *aff'g In re Associated Cemetery Management, Inc., Employees Profit Sharing Trust*, 170 F.Supp. 298 (W.D. Mo., 1958); *In re Fairbanks Realty Trust*, 40 F.Supp. 77 (D. Mass. 1941).

[5] Sections 1(8) and (23) include within the definition of person the following: Corporations, women, officers, partnerships, members of boards of directors or trustees, partnership associations, joint stock companies, unincorporated companies, and associations.

expressio unius est exclusio alterius,[6] while not controlling, certainly supports the inference that labor unions are not considered persons under the Bankruptcy Act.

The only conclusion reached thus far is that the wording of section 1 does not *demand* a particular construction. Thus the Court looks to the legislative history of the Bankruptcy Act for guidance. *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892).

The present Bankruptcy Act is the product of nearly one hundred and eighty years of legislative action.[7] The fifth major legislative effort, the Chandler Act of 1938, substantially reflects the law today. Over the years Congress has changed the Act so that different persons and entities have been entitled to the benefits of bankruptcy. For example, the Act of 1800 was limited to certain businessmen.[8] The Act of June 25, 1910, first included corporations within section 4 (the section describing who may become bankrupts). The many amendments to the four American Bankruptcy Acts demonstrate that Congress has varied access to bankruptcy proceedings by specifically including or excluding certain entities.

The Act of May 27, 1926, 44 Stat. 662, added the present definition of corporation to the Act. Before that time it was not arguable that labor organizations could become bankrupts.

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[6] The phrase means literally that the expression of one thing is the exclusion of the other. It is only a maxim of construction and not a rule of substantive law. *Crancer v. Lowden*, 121 F.2d 645, 649 (8th Cir. 1941). The Court recognizes that the maxim could also be applied tc that part of §4(a) which excludes certain entities from the Act. Labor organizations are not expressly excluded.

[7] The first Act was passed in 1800. For a discussion of that Act and its successors see 1 Collier on Bankruptcy, ¶¶0.01-.07 (14th Ed. 1974).

[8] 1 Collier on Bankruptcy, ¶4.01, 573 (14th ed. 1974).

Congressional debate indicates that this amendment had one purpose: to qualify certain trusts for bankruptcy. Referring to the amendment of section 1 Earl C. Michener, a Michigan member of the House Judiciary Committee, said:

> The principal changes are:
>
> > (1) the meaning of the term 'corporations' is broadened so as to include common-law trusts, and so forth. Under the law today common-law trusts, or what are sometimes called Massachusetts trusts, are not subject to the Bankruptcy Law and this amendment cures this defect in the law. 67 Cong Rec 7671, 7675 (1926).

There is no indication in committee reports or elsewhere that the amendment was intended to include labor organizations.

Contemporary commentators, while questioning the wisdom of the amendments, reached the same conclusion. McLaughlin, *Amendment of the Bankruptcy Act*, 40 Harv. L. Rev. 341, 355-65 (1927). *See also* Colin, *An Analysis of the 1926 Amendments to the Bankrupty Act*, 26 Col. L. Rev. 789 (1926).

The development of American labor law is another factor to be considered. The first recorded American labor case[9] was decided six years after the passage of the first Bankruptcy Act. A substantial body of federal labor law was created by the courts in the Nineteenth Century. *See, e.g., In re Debs*, 158 U.S. 564 (1895). The Erdman Act of 1898, 30 Stat. 424, was the first congressional attempt[10] to regulate unions. Like the

[9] *Philadelphia Cordwainers' Case* (Pa. 1806) reported at 3 Commons & Gilmore, Documentary History of American Industrial Society, 59-248 (1910-11).

[10] The Act was declared unconstitutional in *Adair v. United States*, 208 U.S. 161 (1908).

Erdman Act, subsequent labor legislation described unions as "labor organizations".[11]

In sum, Congress was well aware of labor organizations and their activities by the first part of this Century. Proposed legislation concerning unions generated loud political controversy. The fact that the bankruptcy amendments of 1926 did not create such a political debate is convincing evidence that they were not intended to apply to labor organizations.

The decision of the Bankruptcy Court was based in large part on *United Mine Workers of America v. Coronado Coal*, 259 U.S. 344 (1922). *Coronado Coal* held that activities of labor organizations were covered by the Sherman Act. The Court relied on an earlier decision that members of unions were subject to the restraints and sanctions of the Sherman Act. *Leowe v. Lawlor (Danbury Hatters' Case)*, 208 U.S. 274 (1908).

The Court in *Coronado Coal* looked to both legislative intent and the purpose of the Sherman Act in interpreting the word association. Thus the Court gave the word a broad definition:

> The persons who may be sued under § 7 include 'corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any State, or the laws of any foreign country'. This language is very broad, and the words given their natural signification certainly include labor unions like these. They are as has been abundantly shown, associations existing under the laws of the United States, of the territories thereof, and of the states of the union. 259 U.S. at 392.

[11] Section 6 of the Clayton Act is another example. Act of Oct. 15, 1914, ch. 323, §6, 38 Stat. 731.

However, this definition was explained in terms of Congressional policy:

> Congress in passing drastic legislation to remedy a threatening danger to the public welfare, and did not intend that *any persons or combinations of persons* should escape its application. Their thought was especially directed against business associations and combinations that were unincorporated to do things forbidden by the Act, but they used language broad enough to include all associations which might violate its provisions recognized by the statutes of the United States or the states or the territories, or foreign countries as lawfully existing; and this, of course, includes labor unions, as the legislations referred to shows. (Emphasis added) 259 U.S. at 392.

The Sherman Act is designed to prevent certain conduct, the restraint of monopolization of commerce, by an entity or combination of persons. To further this purpose it is not really necessary to consider the juristic nature of an entity, only its conduct.

The Bankruptcy Act was designed to provide relief to certain debtors by giving them a new start and to distribute assests equitably to creditors. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 559 (1935). The characterization of Local 600 as a person could serve these purposes. But it would also conflict with the clear intent of Congress, unlike the situation in *Coronado Coal*. Thus the procedural aspects of Coronado Coal and its affirmation of the *Danbury Hatters' Case* cannot control this case.

A final word on federal labor policy is necessary. The essence of labor law is the balance of power between labor and management. That balance may only be disturbed by Congress. *Cf. New York Telephone Co. v. New York Department of Labor*,

95 LRRM 2487 (S.D.N.Y. 1977) (dealing with federal preemption of questions of labor policy); *Amalgamated Association of Street Employeees v. Wisconsin Employee Relations Board*, 340 U.S. 383 (1951). Althougn the constitutional parameters of the bankruptcy power may be defined by the courts, its exercise is vested in the legislative branch. *Cf. Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 670 (1935). The judicial inclusion of labor organizations in section 4 of the Bankruptcy Act would usurp that legislative power.

After reaching this conclusion it is unnecessary to discuss the Motor Carriers' claim that Local 600 and the International Union must be considered as one for Bankruptcy purposes. Accordingly, the order of the Bankruptcy Court will be reversed and the case remanded with instructions to dismiss the bankruptcy petition of Local 600.

Dated this 20th day of June, 1977.

/s/ H. KENNETH WANGELIN
United States District Judge

APPENDIX C

United States District Court
Eastern District of Missouri
Eastern Division

In the Matter of Highway and City Freight Drivers, Dockmen, and Helpers, Local Union No. 600, a voluntary unincorporated labor organization, Bankrupt.	In Bankruptcy No. 76-1517B

MEMORANDUM OPINION

(Filed November 1, 1976)

Pending for decision is the Motion to Set Aside and Vacate the Adjudication of Bankruptcy and to Dismiss the Voluntary Petition for Bankruptcy, filed October 5, 1976, by 59 trucking companies, each being a judgment creditor of the bankrupt (hereinafter referred to as union). The Motion was heard on Thursday, October 21, 1976, and taken as submitted.

The petition in bankruptcy, sought to be dismissed, is a voluntary petition filed on September 24, 1976, by the union, and the adjudication sought to be vacated is that resulting from the filing of such a voluntary petition by reason of the provisions of Section 18f of the Bankruptcy Act, 11 U.S.C. 41f.[1]

[1] The union is situated in the City of St. Louis; its membership approximates 6200, comprised of residents of the City, St. Louis County, Mo., and surrounding communities in Illinois. It is affiliated with the International Brotherhood Of Teamsters, Chauffeurs, Warehousemen and Helpers Of America (International). Each of the carrier-movants is an I.C.C. carrier, and each obtained a judgment against the union on account of its having called a strike in breach of a no-strike clause in an existing collective bargaining agreement. Suit against the union was brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185. The proceedings established the union's liability, and the carriers' damages, are reported in *Motor Carriers Counsel of St. Louis, Inc., et al. v. Local Union No. 600 etc.* (E.D. Mo. 1972) 370 F. Supp. 461, aff'd (8 Cir., 1973) 486 F. 2d 650; and in (E.D. Mo., 1974) 384 F. Supp. 214, aff'd (8 Cir., 1975) 516 F. 2d 316. The aggregate amount of the judgments exceeds $5,000,000.00. The Motor Carriers Counsel of St. Louis, Inc., is scheduled, in the bankruptcy schedules, as a creditor to whom $6,036,310.00 is due. Other debts, totaling $532,676.17 are scheduled, a substantial portion of these being for per capita payments due the International and the Central Conference of Teamsters, not paid over apparently because dues otherwise collectible by the bankrupt were garnisheed and only a portion remitted to the union by permission by the movants.

The International was not named a party defendant in the Section 301 proceedings hereinabove referred to.

Section 4a of the Bankruptcy Act, 11 U.S.C. 22(a), provides that

> "Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt."

"Person" is defined by Section 1(23) of the Act, 11 U.S.C. 1(23), which provides

> "The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: . . .
>
> "(23) 'Persons' shall include corporations, except where otherwise specified . . ."

"Corporation" is defined by the same Section; 1(8) of the Act, 11 U.S.C. 1(8) provides:

> " 'Corporation' shall include all bodies having any of the powers and privileges of private corporations not possessed

by individuals or partnerships and shall include partnership associations organized under laws making capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument."

Thus, the "person" who may file a voluntary petition in bankruptcy under Section 4a of the Act includes a "corporation" which, in turn, encompasses "associations." *Associated Cemetery Management, Inc., Employees' Profits Sharing Trust v. Barnes* (8 Cir., 1959) 268 F.2d 97, 101 (Matthes, J.), aff'g. (D.C. W.D., Mo. 1958) 170 F. Supp. 298; *In re Philadelphia Consistory Sublime Princess Royal Secret 32° Ancient Accepted Scottish Rite* (D.C., Pa., 1941) 40 F. Supp. 645, 648; *Collier on Bankruptcy*, 14th Ed., Sec. 4.05(1), pp. 585, 586, and Sec. 4.06, pp. 599-603.

Movants contend that the union is not a "person" within the meaning of Section 4a of the Act. Obviously, Section 4a does not expressly exclude any labor organization as a "person" thereunder.[2] Movants contend for a construction of the Section precluding voluntary bankruptcy by a labor organization even though there is not any such express exclusion.

The argument is made that unless the union is a body which possesses powers and privileges of a private corporation, not possessed by individuals or partnerships, it is not a "corporation", not a "person", within the meaning of the Act. The argument continues, that this union does not possess such powers and

[2] It is to be noted that Congress has *expressly excluded* municipal, railroad, insurance, and banking corporations, and building and loan associations, as "persons" entitled to file a voluntary petition in bankruptcy. They are excluded, also, as entities against which an involuntary petition in bankruptcy may be filed, by Section 4b of the Act, 11 U.S.C. 22(b).

privileges because, under Missouri law (which is applicable, it is argued, because the union has its domicile here) an association of individuals (such as what a union is conceded to be for the purpose of the argument) does not have any legal existence separate and apart from its members. Hence, the argued conclusion, the union is not a "corporation" within the meaning of the Act.

Each of the asserted premises is not valid.

Section 1(8) of the Act specifically includes "associations" within the definition of "corporation". Thus, it does not necessarily restrict "corporation" to a body (whether incorporated or unincorporated) possessing powers and privileges of a private corporation not possessed by individuals or partnerships; nor does the Section presume to restrict "associations" to such a body. Moreover, I do not perceive that the inclusion of "associations" in the definition of "corporation" is as cryptic[3] as suggested by the movants, in view of the pronouncement by the

[3] This word is that employed by the movants (p. 6 of their principal brief). Courts and textwriters are not of the same mind. Inclusion of "associations", and the other four comprehensive classes of bodies, groups and businesses (in addition to the ordinary private corporation), in the Section 1(8) definition manifests a Congressional intention to enlarge the definition of corporation beyond its ordinary meaning, *Kresberg v. International Paper Co.* (2 Cir., 1945) 149 F. 2d 911, 913, which calls for a broad, inclusive construction. *In re Peer Manor Bldg. Corp.* (7 Cir., 1944) 143 F. 2d 769, 771. "The definiton in Section 1(8) is 'meant to enlarge the statutory meaning of "corporation" beyond its ordinary meaning' and calls for 'a broad, inclusive construction of the language used'. The five comprehensive classes of bodies, groups and businesses enumerated in the clause cover practically the whole range of private activities and enterprises, except those carried on by individuals as such and partnerships other than the specified type." 1 *Collier on Bankruptcy*, 14th Ed., Sec. 1.08, p. 62. Historical changes in Section 4 of the Act evidence that "the conception of the classes of persons and business units to be included within the scope of the Bankruptcy Act, either on a voluntary or involuntary petition, has in the main, been a constantly growing one, adapted to the needs of the times and an increasingly complex social and economic order." 1 *Collier*, Sec. 4.01(2), p. 574.

Supreme Court of the United States in *United Mine Workers of America v. Coronado Coal Company* (1922), 259 U.S. 344, 42 S. Ct. 570, 66 L. Ed. 975 (this case to be referred to infra), decided some four year prior to the amendment of Section 1(8) of the Act by the Act of May 27, 1926, 44 Stat. 662, by which amendment the statutory definition of "corporation" was extended to include "associations".

Further, Missouri's substantive determination, that an association is not a legal, suable entity separate and apart from its members, does not determine whether the union is an "association" within the meaning of the Act. *In re Wisconsin Co-Operative Milk Pool* (7 Cir., 1941), 119 F. 2d 999, 1002 (cited with approval by Judge Matthes in *Associated Cemetery Management*, supra, 268 F. 2d loc cit 99); *Sylvan Beach, Inc. v. Koch* (8 Cir., 1944), 140 F. 2d 852, 860(6); *In re Order of Sparta* (3 Cir. 1917), 242 Fed. 235, 239; *In re Carthage Lodge, No. 365, I.O.O.F.* (D.C. N.Y., 1916), 230 Fed. 694, 701. See, also, *First Amer. Bank & Trust Co. v. George* (8 Cir., 1976), 540 F. 2d 343, footnote 6 at p. 349. As stated *In re Wisconsin Co-Operative Milk Pool*, supra, 119 F. 2d loc cit 1002:

> "It is likewise argued that the statutes of Wisconsin indicate that the liquidation of such a corporation is to be left to the state courts and that it was the purpose of Congress to allow the state policy to persist. The argument falls when we remember that paramount bankruptcy power is, under the Constitution, lodged in the Congress; that its enactment is nation-wide in effect and supersedes any state statute interfering therewith.
>
> "The power to determine whether one may be bankrupt and what relief may be granted to him and to his creditors lies with Congress, and any state legislation interfering with the same must give way before that paramount authority. The state can not determine who shall be admitted to bankruptcy; that is the function of Congress . . . State laws create legal interests. Federal legislation, in pursuance of the Constitution, determines whether an interest or right created by local law is within the federal law. The latter must prevail no matter what name is given the interest or right by the local law."[4]

But even of more substantive consequence, in my judgment, is that federal law has long recognized that a labor organization is a legal entity, a business entity, a suable entity, separate and apart from its members, and, indeed, an entity possessing many of the powers of private corporations. An early, if not the first,

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[4] Most assuredly, as pointed out in movants' briefs, the general rule in Missouri is that a labor organization, or other association, cannot sue or be sued in its common or association name. [An exception to the general rule is to be found in *Clark v. Grand Lodge of Brotherhood of Railroad Trainmen* (Mo. Sup., banc, 1931) 43 S.W. 2d 404]. Such is not the rule in other states, and has not been the rule as far back as 1922. See the Court's reference to those states in *United Mine Workers of America v. Coronado Coal Company* (1922) 259 U.S. 344, in footnote 1, p. 386, 42 S. Ct. 574, 575, 66 L. Ed. —. (Research has not been undertaken to determine whether other states have enacted legislation, since then, authorizing a labor organization or other association to sue or be sued in its common or association name.) It would assuredly be anomolous to permit the filing of a voluntary petition in bankruptcy by a labor organization situated in some one of those states, but deny that filing to one situated in Missouri solely because of Missouri's adherence to old common law concepts [so characterized in *Marshall v. International Longshoremen & W.U., Local 7* (Calif. Sup., 1962) 57 Cal. 2d 781, 22 Cal. Reprtr. 211, 371 P. 2d 987, 990], an attitude said to be sorely in need of change to further justice to both suers and the sued. *A Survey of Missouri Labor Law* (April, 1953) 18 Mo. L. Rev. 93, 96-103 (Austin F. Shute).

Missouri Courts' adherence to the old common law concept has not, however, blinded its legislature from the recognition that a labor organization truly is something, a body, separate and apart from its members. For example, a labor organization is exempt from Missouri income-tax taxation, Sec. 143.321 V.A.M.S. [incorporating in effect Sec. 501(a)(5), 26 U.S.C. (1954 I.R.C.)]; is exempt from Missouri's anti-trust law, Sec. 416.041 V.A.M.S. (Laws 1974, p. 901, sec. 1); is made expressly subject to the anti-discrimination provisions of its Discriminatory Employment Practices Act, Sec. 296.020(2), (4) V.A.M.S. (Laws 1961); is made subject to its

federal judicial recognition thereof is found in *United Mine Workers of America v. Coronado Coal Company*,[5] supra.

In addressing itself to the labor organizations' argument that the suit should have been dismissed as to each of them, because, as an association, none could be sued in its common or association name absent appropriate legislative authority, the *Coronado Coal court* (Chief Justice Taft), said:

> "The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obli-

Election Campaign Expenditures Law, Sec. 130.020(5) V.A.M.S.; its union labels are recognized by provisions for their registration and by penalty provisions for their fraudulent use, etc., Sec.'s 41.-010 to 417.090 V.A.M.S.; and certain public employees are authorized to form and join such bodies, Sec. 105.500 et seq. V.A.M.S.

Of even greater substantive significance, however—and even though the labor organization was not sued in its association or common name—is *Wachter v. Grogan et al.* (Mo. App., 1966) 410 S.W. 2d 550, cert. den. 389 U.S. 825, which recognizes that a union member may successfully claim damages against the union from which he was wrongfully expelled on account of that wrongful expulsion, following *International Association of Machinists v. Gonzales* (1958) 356 U.S. 617, 78 S. Ct. 923, 2 L. Ed. 2d 1018, reh den 357 U.S. 944, 78 S. Ct. 1379, 2 L. Ed. 2d 1559. Such a claim could not be recognized, of course, if the old common law concepts concerning associations were strictly followed: as, under those concepts each member is a principal with every other member, and is as responsible for the conduct of the group (or any of its members) as is the group itself and every other one of its members, thus precluding assertion of a claim by one of the group (principal) against the group or other members of it (co-principal). See *Marshall v. International Longshoremen's & Warehousemen's Union, Local 6*, Dist., 1, supra.

[5] Involving a suit for damages, for damage to tangible property, arising out of a conspiracy to restrain and monopolize interstate commerce, in violation of the Sherman Anti-Trust Act. Named defendants in the cause (filed in Arkansas where, by its law, a labor organization could not sue or be sued in its common name) were the *United Mine Workers of America;* District 21 of the U.M.W.; and 27 local unions in the District; and certain officers of each of those labor organizations; and 65 individuals, most of whom were members of the defendant labor organizations, some of whom were not.

> gations assumed in traveling expenses, holding of conventions, and general overhead cost, but most of all in strikes, are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, and in every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.[6]
>
> "Undoubtedly at common law an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done, and it could only sue or be sued in the names of its members, and their liability had to be enforced against each member. (cases) But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. Their right to maintain strikes, when they do not violate law or the rights of others, has been declared. The embezzlement of funds by their officers has been especially denounced as a crime. The so-called union label, which is a quasi trademark to indicate the origin of manufactured products in union labor, has been protected against pirating and deceptive use by the statutes in most of the states, and in many states authority to sue to enjoin its use has been conferred on unions. They have been given distinct and separate representation and the right to appear to represent union interests in statutory arbitrations, and before official labor boards." (259 U.S. loc. cit 385, 386).

[6] Obviously, Chief Justice Taft, in this portion of the quotation, was referring primarily to the international union. Nonetheless, it is equally as clear that the court's ruling extended to the District organization, and to the 27 local unions, who were also joined as defendants.

Continuing, after citing various federal statutes which recognized labor organizations as lawful entities, something separate and apart from its members, Chief Justice Taft said (259 U.S. loc cit 391, 392):

> "In this state of federal legislation, we think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes. The fact that the Supreme Court of Arkansas has since taken a different view in Baskins v. United Mine Workers of America, supra, cannot under the Conformity Act operate as a limitation on the federal procedure in this regard.
>
> "Our conclusion as to the suability of the defendants is confirmed in the case at bar by the words of Sections 7 and 8 of the Anti-Trust Law. The persons who may be sued under Section 7 include 'corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country' (Sec. 8). This language is very broad, and the words given their natural signification certainly include labor unions like these. They are, as has been abundantly shown, associations existing under the laws of the United States, of the Territories thereof, and of the States of the Union."

This recognition, of a labor organization as an entity separate and apart from its membership, was confirmed twenty-two years later by the Supreme Court in *United States v. White* (1944), 322 U.S. 694, S. Ct. 1248, 88 L. Ed. 1542,[7] where

[7] White was adjudged in contempt by the District Court for failing to turn over to a grand jury certain records of an Operating Engineers Local, on the asserted ground that he as an individual member of the local might be incriminated thereby. The Court of Appeals reversed the contempt adjudication. In turn, the Supreme Court reversed the Court of Appeals, reinstating the contempt adjudication.

a labor organization is characterized as an organization with a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only. In thus categorizing a labor organization, the Court states:

> "Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual members of the union. The unions existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws, which in controversies between member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of all the members. Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees."

These *Coronado Coal* and *White* cases are said to have swept away, so far as federal law is concerned, the old common law concept that a labor organization is not a legal entity. *Marshall v. International Longshoremans & W.U., Local 6* (Cal. Supr., 1962), 57 Cal. 2d 781, 22 Cal. Reptr. 211, 371 P. 2d 987.

Some three years after *White*, Congress enacted the Labor Relations Act, 1947 (29 U.S.C. 141 et seq.), Section 301 (29

U.S.C. 185) of which expressly permits a labor organization to sue and be sued as an entity in the courts of the United States.[8] The principal motive behind the enactment of Section 301 was the belief that courts of many states could provide only imperfect relief against a labor organization because of rules of local law making suits against them difficult or impossible by reason of their status as unincorporated associations. *Charles Dowd Box Co., Inc. v. Courtney* (1962), 368 U.S. 502, 510, 82 S. Ct. 519, 7 L. Ed. 2d 483. Section 301 manifests Congressional intention to eliminate the amorphous status of a labor organization and to personify it as a jural entity. *Donnelly v. United Fruit Co.* (1963), 40 N.J. 61, 190 A. 2d 825, 831; see *Communications Workers of America Local No. 6325 v. Brown* (Mo. App. 1952), 252 S.W. 2d 103, 106.

No longer, then, can it be successfully argued that a labor organization is not a separate entity apart from its members. No longer, then, is its earlier amorphic status an impediment to being recognized as an entity with sufficient being to file a voluntary bankruptcy petition, so long as it is an "association" within

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[8] Section 301 provides in part as follows:

"(a) Suit for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

As stated in footnote 1, supra, movants' judgments against the union were recovered in proceedings filed under this Section.

the meaning of the Bankruptcy Act. And, I so hold that "association". in the Act, does embrace a labor organization.

The Bankruptcy Act does not expressly define "association". Nevertheless, there is nothing in the Act which suggests that it is used to mean anything more, or less, than it means when commonly used in the law: that is, a body of persons, acting together, united without a charter emanating from some political subdivision, but upon methods and forms used by unincorporate bodies, or even incorporated bodies, for the prosecution of some common enterprise. See *In re Poland Union* (2 Cir., 1935), 77 F. 2d 855; *Clark v. Grand Lodge of Brotherhood of Railroad Trainmen* (Mo. Sup., banc, 1931), 43 S.W. 2d 404, 408. See 1 *Collier on Bankruptcy*, 14th Ed., Sec. 4.06, pp. 599, et seq., and cases cited.

All of the cases, cited heretofore, involving labor organizations, plainly recognize such organizations as "associations", within its commonly accepted meaning. See also *Dowd v. United Mine Workers of America* (8 Cir., 1916), 235 Fed. 1, 4; *Ruggles v. International Assn. of Bridge, Structural & Ornamental Iron Workers* (Mo. Sup., 1932), 52 S.W. 2d 860, 862. So being, a labor organization falls with the *letter* of the Bankruptcy Act.

Movants argue, however, that the *spirit* of the Act militates against inclusion of such an organization within its meaning, arguing that Section 301 of the Labor Relations Act, 1947, supra, was enacted to insure labor and industrial peace and harmony and stability; that to permit bankruptcy and a discharge in bankruptcy of a debt, based upon, for example, damages arising from a breach of a collective bargaining agreement, is inimical to that peace and harmony and stability. The argument presumes that, if bankruptcy may be availed of, a labor organization would be wont to break its collective bargaining agreement(s) with impunity, conforted in the knowledge that a

bankruptcy discharge would relieve it from the full consequences of the breach.

I have serious doubts that a labor organization, any more than any other party to a contract (i.e., an individual, or a private corporation, as any of the movants, who may concededly file a voluntary petition in bankruptcy), will behave any more irresponsibly in respect of its duties, obligations and liabilities to third persons simply because bankruptcy may provide some relief against the full consequences of such behavior. Experience has not demonstrated, generally, that the availability of bankruptcy relief has been an important, decisive factor in the course of conduct of one's ordinary human and business affairs with another.

Further, the Bankruptcy Act itself penalizes certain conduct, by provisions for the denial of bankruptcy discharge generally, and by provisions for the non-dischargeability of debts. Sections 14 and 17 of the Bankruptcy Act, 11 U.S.C. 32, and 35. These provisions would seem to me to deter bad faith breaches of collective bargaining agreements if the haven of the Bankruptcy Act was thought to shield a labor organization from the results of that bad faith. And, even of more importance: if the availability of bankruptcy to a labor organization were shown to create strife and unrest and discord, Congress can easily and quickly exclude, by specific provision in the Act, the availability of bankruptcy to a labor organization, as it has already done to various entities by Section 4 of the Act, supra.

Finally, it is argued that this union is not a functional entity, separate and apart from its relationship to the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America (International), "and has no more right to be adjudicated bankrupt in a proceeding not joined in by the International than would the head or hands of a natural person."

This union, consisting of some 6200 members, residents of St. Louis, St. Louis County, and various places in Illinois, is

affiliated with the International. Exhibits in evidence clearly reflect that the International exercises effective control over many of the activities of this union, and reserves to itself many important functions, particularly in the area of negotiating collective bargaining agreements national in scope and effect. Other controls over this union's activities are exercised, as well, by other intermediate bodies. Yet, for many purposes, this union is recognized as an autonomous body, having the power (vis a vis the International and other intermediate bodies), among other things, to control its own finances, own real and personal property, hire employees and outside professional help (accountants, attorneys), make loans, and settle local grievances.

Obviously, it was sufficiently autonomous to have been sued by the movants under Section 301 of the Labor Relations Act, 1947, supra, without a joinder of the International as a defendant in the cause; and sufficiently autonomous to call a strike, in violation of the collective bargaining agreement then in effect and cause injury to the movants. It is as much an autonomous entity as that held so to be in *Local No. 218, Bakery & Confect. Workers International Union of America v. Local No. —, American Bakery & Confectionery Workers International Union, AFL-CIO* (Mo. Sup., 1966) 405 S.W. 2d 917. And I so hold the union to be sufficiently autonomous, a functional legal entity, and an "association" a "corporation", a "person", within the meaning of the Bankruptcy Act, entitled to file a voluntary petition in bankruptcy under Section 4a of that Act.[9] Accordingly, the Motion To Set Aside And Vacate

[9] Investigation reflects that at least one other labor organization has filed a voluntary petition in bankruptcy. Local Union No. 930 of the United Brotherhood of Carpenters & Joiners of America, AFL-CIO, filed a voluntary petition in bankruptcy on October 11, 1973, in the United States District Court for the District of Minnesota, at St. Paul, No. 6-73-1062. An order of discharge was entered in that case on October 6, 1975, by Bankruptcy Judge John J. Connelly. Apparently the adjudication and bankruptcy process was not resisted by any of that local's creditors. Research does not disclose any reported decisions entered in that case.

The Adjudication Of Bankruptcy And To Dismiss The Voluntary Petition is to be overruled, and a separate order so doing is being entered this date.

Dated, at Saint Louis, this 1st day of November, 1976.

/s/ (Illegible)
Bankruptcy Judge

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